

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

PATRICK SCHROEDER,

Petitioner,

v

Case No. 1:04-cv-30

PAUL RENICO,

Hon. Wendell A. Miles

Respondent.

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ORDER ADOPTING MAGISTRATE JUDGE'S
REPORT AND RECOMMENDATION

On October 6, 2006, United States Magistrate Judge Ellen S. Carmody issued a Report and Recommendation ("R & R") recommending that Patrick Schroeder's petition for writ of habeas corpus be denied. Petitioner has filed a timely objection to the R & R. The court, having reviewed the R & R filed by the United States Magistrate Judge in this action, agrees with the recommended disposition contained in the R & R.

In his objection, petitioner appears to argue that the Magistrate Judge erred in concluding that he had procedurally defaulted his claims of ineffective assistance of trial and appellate counsel. However, the Magistrate Judge did not err. After his direct appeal, petitioner filed a delayed application for leave to appeal in the Michigan Court of Appeals in which he failed to assert his ineffective assistance claims. He has provided no explanation for his failure to raise his claim of ineffective assistance of appellate counsel in that first application. As

petitioner's claim of ineffective assistance of appellate counsel is procedurally defaulted, it may not be used to show cause for the default on his claim of ineffective assistance of trial counsel.

Burroughs v. Makowski, 411 F.3d 665, 668 (6th Cir.2005). Moreover, petitioner has not presented any new and reliable evidence of his actual innocence.

Judgment will be entered accordingly.

Entered this 2nd day of November, 2006.

/s/ Wendell A. Miles
Wendell A. Miles
Senior U.S. District Judge